



Via e-mail

October 22, 2020

Re: Unconstitutional Censorship of October 23rd Event at University of Hawai'i Manoa

Dear President Lassner:

We write to express our serious concerns with respect to Zoom's cancellation of the event "We Will Not Be Silenced: The Case of Khaled and Solidarity from Hawai'i to Palestine," scheduled to take place tomorrow, October 23, at the University of Hawai'i Manoa (UHM). Such censorship, which UHM is party to, violates the First Amendment and academic freedom rights of the professors, groups, and departments who organized and are co-hosting the event. Accordingly, we demand that you immediately remedy this situation by finding an alternative platform as the law and your educational mission require you to do.

As you must be aware, tomorrow's event, sponsored by Students and Faculty for Justice at UH, KOA Futures, the UHM Department of Ethnic Studies, the UHM Department of Political Science, and Hawai'i Peace and Justice, was scheduled to take place on Zoom because in-person classes and events pose a serious health risk due to COVID-19. On October 20, Zoom publicly announced that the event would not be permitted to take place, claiming that a scheduled special appearance by Leila Khaled would violate Zoom's terms of use and community standards. On October 21, Zoom cancelled the event, sending UHM Professor Cynthia Franklin, who organized the event, an email falsely stating that she herself had cancelled it.

In a letter from Zoom to UHM, Zoom stated that it would cancel the October 23 event because of Ms. Khaled's "recently reported glorification of violence" during an event at another school, San Francisco State University, on September 23. Ms. Khaled never spoke at this event because Zoom canceled it before it took place and YouTube blocked the event before Ms. Khaled could speak. Zoom's vague claims that the October 23 event would violate the law because of Ms. Khaled's "affiliation or membership in the Popular Front for the Liberation of Palestine" are similarly baseless.

Israel lobby organizations have made frivolous threats based on a false claim that it would constitute criminal activity to host Ms. Khaled for an academic discussion. Lobby groups claimed that it would constitute "material support for terrorism" to host Ms. Khaled as a speaker because she has been publicly affiliated with the Popular Front for the Liberation of Palestine (PFLP), a group that the U.S. has designated as a terrorist organization, and because Ms. Khaled, now 76, participated in two plane hijackings fifty years ago, as part of Palestinian resistance to Israeli occupation.

The claim that professors in the U.S. cannot host Ms. Khaled to speak has no basis in law or fact. Ms. Khaled was not compensated for the events, she did not plan to represent the PFLP at either

event, and fundamentally, the exchange of ideas in a university setting is constitutionally protected free speech. Again, these events are academic discussions: the September 23 class event was to examine critical narratives of resistance, gender and sexual justice, and the October 23 webinar's focus is on liberation, censorship and academic freedom.

To extend counterterrorism laws to pure speech and academic discourse would severely undermine all of our First Amendment rights to speech and association.

For you to give any credence to such an unconstitutional argument exposes your own professors engaged in scholarship and critical discussions to special risk, not to mention severely poisons the climate of academic freedom at UHM.

If Zoom's contract allows the company to censor University events, the University has engaged in an unconstitutional abdication of its responsibility to the organizers of the event, its faculty and student body.

As you well know, decades of First Amendment doctrine protect the free exchange of ideas at public universities, including controversial speakers. The University of Hawai'i is obligated under the First Amendment and under multiple contractual commitments to protect campus free speech and academic freedom.

The University has held Zoom out as the "University of Hawaii's systemwide conferencing and webinar provider," and has stated that Zoom is available to "live stream lectures or special guests to a large audience using interactive webinar features."¹ UHM has described Zoom as a "virtual lecture hall or auditorium."²

Having established such a forum, UHM must abide by its First Amendment responsibility to provide content-neutral and viewpoint-neutral access. As the Supreme Court has recognized, when a public entity engages in state action with a private company, the public entity can incorporate compliance with its constitutional responsibilities into its contract and cannot "effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith."³

As a public university system educating nearly 50,000 students, UHM has financial leverage in its dealings with Zoom. Yet, UHM administrators have asserted that the University is unwilling to risk its license over this event. By continuing to contract with Zoom without ensuring that the "We Will Not Be Silenced: The Case of Khaled and Solidarity from Hawai'i to Palestine" event will be allowed to go forward, you have jeopardized UHM's mission to allow the free exchange of ideas – even those that challenge the status quo. UHM is ratifying Zoom's censorship and creating a system of unequal access, not only in violation of the law and the University's

¹ Information Technology Services, Zoom Transition, <https://www.hawaii.edu/its/videoconferencing/zoomtransition/> (last accessed Oct. 21, 2020).

² Information Technology Services, Zoom Webinar Service, <https://www.hawaii.edu/its/videoconferencing/webinar/> (last accessed Oct. 21, 2020).

³ *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).

contractual guarantees of academic freedom, but also of the University's own educational mission.

If the University is unable to ensure that Zoom will allow the event to go forward, the University must arrange for an adequate alternative venue with the same features, and it must cancel or amend its contract with Zoom to ensure that UHM is able to live up to its constitutional and educational responsibilities. It is vital that you arrange for a Zoom platform or an alternative immediately so that organizers have time to prepare and notify participants and those who signed up for the webinar.

We look forward to your immediate reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zoha Khalili', written in a cursive style.

Zoha Khalili
Staff Attorney
Palestine Legal

On behalf of:

American-Arab Anti-Discrimination Committee (ADC)
Asian Americans Advancing Justice – Asian Law Caucus
Center for Constitutional Rights
Civil Liberties Defense Center
Climate Defense Project
Defending Rights and Dissent
National Lawyers Guild International Committee
Partnership for Civil Justice Fund
Project South
Water Protector Legal Collective